

1905-031
Lee Co.

Chancery Causes: J. M. Howard vs. Ben Howard &c

Weston, Fee

CA-Debt
T-Property

-Deed

To the Honorable H.A.W.Skeen, Judge of the Circuit Court of
Lee County, Virginia:

Humbly complaining your orator J.M.Howard, a citizen of said
County of Lee, would respectfully show unto your Honor, that on the
23rd day of April, 1904, before W.P.Weston, one of the Justices of
the Peace in and for said County, he obtained a judgment against
one Ben Howard for the sum of Sixty Five Dollars (and Seventy-five
cents (\$65.75), with interest thereon from the 1st day of May, 1903,
and \$4.50 costs, a copy of which judgment together with a copy of
the warrant thereto annexed, is herewith filed as a part hereof
marked "Exhibit No. 1"; That said Judgement was on the 31st day
of May, 1904, duly docketed and properly indexed in the County
Clerk's Office of Lee County, in Judgement Lien Docket No.4, page
69, and a transcript of said judgment as docketed in said lien
Docket is herewith filed as a part hereof marked "Exhibit No.2"

Your orator will now show your Honor that the said Ben Howard
has never paid said judgment or any part thereof to your orator,
and that the same and every part thereof is still due and owing
to your orator.

Your orator will now show your Honor that on the ____ day of
_____, 1____, that said Ben Howard and one James Howard,
jointly purchased from one W.P.Weston a certain tract or parcel of
land, containing about 283 acres, lying and being near Hardy's
Creek in Lee County, Virginia and known as the A.H.Fulkerson land,
for which tract of land the said Howards promised and contracted to
pay the sum of \$2500.00; that they did pay down in cash the sum of
\$1600.00 part of said purchase price and gave their notes for the
residue thereof, and that the said Weston then and there executed
to them his title bond for said land thereby binding himself to
convey said land to them by deed when said balance of said purchase
money should be fully paid by said Howards; but said title bond has
never been recorded in the Clerk's office of Lee County, and as your
orator is informed is in the hands of the said Howards, and therefore
your orator is unable to file a copy thereof with this bill.

Said Howards tooook possession of said land immediately after making said purchase, and proceeded to use the same for their purposes, ^rcut large amounts of timber therefrom which they sold, and the debt upon which your orator obtained his judgment is for work and labor performed by him in and about cutting and removing said timber from said land.

Your orator has been informed that said Howards have lately paid all of the balance due and owing by them on the purchase money for said land to the said Weston.

Your orator will now show your Honor that after the time when his said judgment was rendered and after it was duly docketed and indexed in the County Clerk's office, the said Ben and James Howard negotiated a sale of the said tract of land to one John Fee for the sum of \$1600.00, and having not temselves obtained a deed for said land, they directed the said W.P.Weston to make a deed thereto conveying said land directly to said John Fee, and in accordance with said directions the said Weston, together with his wife, Elizabeth S.Weston, did on the 7th day of July, 1904, convey said land by deed, to the said John Fee, and said deed was on the 8th day of July, 1904, duly admitted to record in the County Clerk's office of Lee County in Deed Book No.41, page 540. A copy of said deed is filed herewith as a part hereof marked "Exhibit No.3"

Your orator will now show your Honor, that notwithstanding the fact that his judgment was duly docketed as required by law and that thereby notice thereof was given to all purchasers of said land, upon hearing that negotiations were being entered into between said parties for the sale and purchase of said land, your orator went to _____, the agent of the said John Fee in the purchase of said land, and informed him of the existence of his said judgment against said Ben Howard, and that the same was a lien on the interest of said Ben Howard in said land. And your orator would further state that the said W.P.Weston, having been the justice who rendered said judgment, informed the said John Fee, or his agent, at the time of the making of the said deed, that your orator had said judgment against the said Ben Howard

and that the same constituted a lien upon said Ben Howard's interest in said land; and your orator alleges that the said sale of said land by the said Ben Howard to the said John Fee, was made with intent to hinder, delay and defraud your orator in the collection of his said judgment, that said sale was wholly fraudulent, and that the said John Fee had knowledge of such fraudulent intent.

Your orator alleges that said Ben Howard owned a half interest in said tract of land, that notwithstanding the deed from the said Weston and wife to said John Fee, your orators said judgment is a lien on the said Ben Howard's half interest in the same, and that he is entitled to have said interest sold for the payment of his said judgment; and your orator further alleges that there are no other liens against said interest in said land.

The prayer therefore of your orator is that the said Ben Howard, James Howard, John Fee and W.P. Weston be made parties defendant to this bill, that they answer the same but not under oath as answer under oath is expressly waived, and that upon a final hearing the said deed from said Weston and wife to said John Fee be declared null and void as to your orator's said judgment; that said judgment be decreed to be a lien on said Ben Howard's one-half interest in said tract of land; that the said interest in said tract of land be sold for the payment of said judgment, and that said Weston be required to make such assurances of title as may be deemed necessary by the Court to make good and sufficient title from him to a purchaser at such sale as may be made of said land in this suit; and for full and complete general relief.

And he will ever pray &c.

Duncan & Criddle P.Q.

Pr. = 68.75
 2nd to 12/11/05 10.20
 75.95
 4.50 = costs
 \$80.45

Costs:
 Clerk \$10.36
 Shff. 1.00
 Atty 5.00
 J. \$16.36
 Part 1.50
 \$17.86

J. M. Howard
 vs. { In Chy.
 Ben Howard et al
 — Bill —

Filed August 6th
 1904 Oleg Ewing
 Clerk.

1904, 1st Sept. Rules.
 Bill filed, Spas.
 Executed as to
 home disto. & D.N.
 2nd Sept Rules
 D.N. confirmed &
 Cause set for
 hearing as to
 them.

To the Honorable H.A.W.Skeen, Judge of the Circuit Court of
Lee County, Virginia:

The separate answer of James Howard to a bill exhibited against
him and others in this Honorable Court by J.M.Howard;

For answer to said bill, or to so much thereof as respondent
is advised that it is material or necessary that he should answer
the same, answering he says:

That as to the judgment of the plaintiff against said Ben Howard
one of the defendants in this cause, for the sum of 65.75, respond-
ent knows nothing, but supposes that plaintiff's allegation relative
thereto are true.

Respondent says that it is true that he and Ben Howard did
purchase jointly from W.P.Weston the tract of land mentioned in
plaintiff's bill, but never obtained any conveyance of the legal
title thereof; that they afterwards sold said tract of land one
John Fee, as stated in his answer filed in this cause, which answer
respondent here adopts, and prays that the same may be considered
as a part hereof as fully as if herein fully set out. Respondent
now owns no interest in said tract of land, having conveyed his
entire interest to said John Fee.

Respondent says that the said judgment above referred to is ^{not}
now, nor ever was, any lien whatever upon the interest owned by respondent
in
said land.

And now having fully answered said bill, respondent prays to
be hence dismissed with his costs in this behalf expended.

A M. Givins p.d.

be hence diminished with his costs in this behalf expended.

And now having fully answered said bill, respondent prays for said land.

Now or ever was any item whatever upon the interest owned by respondent in respondent says that the said judgment above referred to is entire interest to said John Doe.

Now owns no interest in said tract of land, having conveyed his as a part hereof as fully as it herein will set out. Respondent

respondent prays for costs, and prays that the same may be considered John Doe as stated in the bill, and that the same may be considered as a part hereof as fully as it herein will set out. Respondent

J. M. Howard
13. } *Ans. of Jas Howard*
Ben Howard et al

Filed in open court
by leave thereof, Feb.
20th 1908
W. C. Hewing Clerk

is advised that it is referred or necessary that he should answer for answer to said bill, or to so much thereof as respondent him and others in this Honorable Court by J. M. Howard; the separate answer of James Howard to a bill exhibited against the County, Virginia:

To the Honorable U.S.A. S. Keen, Judge of the Circuit Court of

J.M.Howard, Compl't.)
vs.) In Chy..
Ben Howard et al., Defts.)

The seperate answer of John Fee to a bill of complaint exhibited against him and others in the Circuit Court of the County of Lee by J.M.Howard.

The respondent reserving to himself the benefit of all just exceptions to the said bill for answer thereto, or to so much thereof as he is advised that it is material he should answer, answers and says:

That as to the judgment of the Complainant against Ben Howard, co-defendant, for \$85.75, the respondent knows nothing, but he presumes it is true.

The respondent also presumes that it is true that on the day of, 1902, the said Ben and James Howard, jointly, purchased, or contracted to purchase, from one W.P.Weston a certain tract or parcel of land, containing about 233 acres, lying and being near Hardy's Creek in Lee County, Virginia, and known as the A.H. Fulkerson land, for which they agreed to pay the sum of \$2500.00, but the respondent denies that they paid down in cash at the time of their purchase the sum of \$1600.00, ~~and he further denies that the said Ben Howard ever paid one single cent on said purchase,~~ but he is informed, and supposes it is true, that ~~they said James Howard~~ paid down \$900.00 at the time of said purchase, and ~~they said James and Ben~~ executed their joint notes for the residue of said purchase price, one of which said notes ~~they said James~~ afterwards paid.

The respondent supposes it is true that the said Weston executed to the said Howards his title bond binding himself to convey said land to them upon the payment to him of the balance of the purchase price, but of this title bond the respondent knows nothing, further than he is informed by said Howards that it is lost.

The respondent admits that it is probably true that said Howards took possession of said land immediately after their purchase from said Weston, that they proceeded to use the same for their purposes, to cut large amounts of timber therefrom which they sold, and it is probably true that the debt upon which the complainant's

judgment was obtained was for work and labor performed by him in and about cutting and removing said lumber from said land, but of this the respondent knows nothing.

The respondent denies that the said Howards have lately paid all the balance of the purchase money due by them to the said Weston on said land, except as hereinafter stated.

The respondent admits that it is true that after the Complainant's judgment was rendered and duly docketed and indexed in the County Clerk's office, that the said Ben and James Howard sold said tract of land to the respondent, John Fee, for the sum of \$1600.00, and that they directed the said W.P. Weston to make a deed thereto, conveying said land directly to the respondent, and your respondent admits that in accordance with said directions the said Weston, together with his said wife, did, on the 7th day of July, 1904, convey said land by deed to the respondent, and that said deed was duly admitted to record in the County Clerk's office of Lee County.

The respondent now avers, and would show unto the Court, that sometime about the month of June, 1904, the said James and Ben Howard approached him, proposing a sale of the said land referred to in said Complainant's bill, known as the A.H. Fulkerson land, stating to the respondent that the said W.P. Weston had brought suit against them for the balance of the purchase money due him on said land, and had enjoined them from cutting or removing the timber from said land under their contract with one Lon H. Baylor, and that unless they could sell said land they could not meet the payment to the said Weston, and would therefore lose the whole of said land. Whereupon the respondent entered into an agreement with them to take said land off their hands at the price of \$1600.00, under this further agreement and understanding, that the respondent should first pay off and settle the suit against them by the said Weston for the recovery of the balance of the purchase money against them on said land, and the residue of said \$1600.00, whatever it might be, the respondent was to pay to them, and the said Weston was to make the deed direct to the respondent. Under this contract and agreement, on July 7th, 1904, the respondent paid to said Weston the sum of \$976.00, in settlement of said suit for the recovery of the balance of his purchase money lien against said land, and the

residue, \$624.00, the respondent paid over to the said Howards, and the said Weston, according to the direction of the said Howards, executed to the respondent a deed to said land, which said deed was recorded July 8th, 1904, in the County Clerk's office of Lee County, Virginia, and the respondent avers that the object of the parties concerned, in having the deed made direct from the said Weston to the respondent, was to place the respondent in the shoes of the said Weston as to the \$976.00, the amount of his purchase money lien, and the respondent is advised that as to this \$976.00, he is entitled to be subrogated to the rights of the said Weston, the amount paid him in settlement of his said purchase money lien, with interest thereon from said 7th day of July, 1904, till paid.

The respondent denies that the said sale of said land by the said Ben Howard, or by the said Ben and James Howard, to him, was made with the intent to hinder, delay and defraud the complainant in the collection of his said judgment, and he denies that said sale was fraudulent, and he most emphatically denies that he had any knowledge of any such fraudulent intent. The respondent is now a very old man, 92 years of age, tottering upon the brink of the grave, feeble in body and mind, with no intent to defraud any one, and if such an intent existed upon the part of any one in the aforesaid transaction he avers it was not upon his part, nor was he known to such. ~~The respondent denies that the said Ben Howard owned any interest whatever in said land, ^{legally or equitably}, that he ever paid one single cent on said land, but on the contrary every dollar that was paid the said Weston on said land was paid by the said James Howard and the respondent, and the respondent denies that the complainant's said judgment is a lien on said land in any way, and especially not as against the \$976.00, paid by the respondent to the said Weston in satisfaction of his said purchase money lien, for in this particular~~ The respondent ^{prays} ~~is advised~~ that he ~~is~~ entitled to be substituted to the rights of the said Weston.

The respondent denies all fraud, unlawful combination, and confederacy; and now having answered the complainant's bill as fully as he is advised it is material he should answer, he prays to be hence dismissed with his reasonable costs in this behalf expended, and he will ever pray, &c.

By A. M. Lewis, L. C.

John Lee,
Defendant.

J. M. Howard
vs. { Ans. of John Fee.

Ben Howard et al.

Filed in open court
by leave thereof, Sept.

26th, 1904.

W. C. Caring, Clerk.

#

J. M. Howard - - - - - Plaintiff,

vs. In Chancery.

Ben Howard et al - - - - - Defendants.

This cause came on this day to be heard on the papers formerly read herein, and was argued by counsel.

And it appearing to the court by statement of counsel that the judgment rendered in this cause on the 9th day of December, 1905, in favor of the plaintiff against Benjamin Howard, together with the costs of this suit, has been fully paid off and satisfied, and that nothing further remains to be done in this cause, it is therefore adjudged, ordered and decreed that this cause be stricken from the docket.

J. M. Howard
vs. { Lu. Clay.

Ben Howard et al

Final decree

Entered in C.C.B.
#8, page 120 re.

Enter this decree
This 19 day of Feb
H. A. C. B. W.

J. M. Howard - - - - - Plaintiff

vs. In Chancery.

Ben Howard et al _ - - - - Defendants.

And

H.C.T.Richmond, Trustee,--- - - - - Plaintiff.

vs. In Chancery.

James Howard et al - - - - - Defendants.

These causes came on again this day to be heard together, up-
on the papers formerly read in each of them, and the report of James
W.Orr, Special Commissioner, filed in said causes on the 1st day
of December, 1905, with depositions and statements therewith and
exceptions thereto.

On consideration whereof each of said exceptions are overruled
and said report is approved and confirmed.

It is therefore adjudged, ordered and decreed that the amount
paid by John Fee to W.P.Weston on the purchase price due by Benja-
min and James Howard, constitutes a first lien upon the tract of
land, in the bill and proceedings mentioned; and it is adjudged,
ordered and decreed that said John Fee recover of Benjamin and James
Howard the sum of \$350.00 with interest thereon from the 12th day
of July, 1902, till paid; and it is further adjudged, ordered and
decreed that Jesse M. Howard recover of Benjamin Howard the sum
of \$30.57 with interest on \$65.75 part thereof from January 1st,
1906, till paid, and the cost of the first above styled suit to
be taxed by the Clerk, and that he also recover the sum of \$1.00
cost on the other judgment mentioned by Commissioner Orr in his re-
port; and it is further adjudged, ordered and decreed that unless
said sums herein decreed are paid within 30 days from the rising
of this Court, then that Geo.P.Cridlin, who is appointed a spe-
cial Commissioner for the purpose, will proceed to sell the land
in the bill and proceedings mentioned, or so much thereof as will
be necessary to pay said recoveries and the cost of said suit. Said
sale shall be made at the front door of the Courthouse of Lee County,
at public out-cry to the highest bidder, on a credit of 6, 12 and
18 months, except a sum sufficient to pay cost of suit and the com-

missions of sale, which the Commissioner will require to be paid down in cash. For the deferred payments' said Commissioner will take notes payable to himself as Commissioner, with good personal security, bearing interest ^{of sale} from date. Before selling, he will advertise the time, place and terms of selling for 30 days at two or more public places in said County, one of which shall be on the Courthouse door and another in the neighborhood where said land is situated, Before proceeding to act under this decree, said Commissioner will execute bond before the Clerk of this Court in the sum of \$2000.00 conditioned to faithfully account for all moneys received by him. Said Commissioner will report his action to this Court.

And it is further adjudged, ordered and decreed that said second above styled cause be dismissed and that the defendants recover their costs by them in the defence of said cause expended to be taxed by the Clerk, for which execution may issue, and said second named cause is stricken from the docket, and the first named cause is continued.

J. M. Howard
vs { In Chy
Ben Howard et al
Md

H. O. P. Richmond Trust
vs. { In Chy
James Howard et al

Entered in C.B.

No. 8, page 115 &c.

Enter this decree
Dec. 19, 1905
J. C. W. S. C. W.

This deed made this the 5th day of Aug., 1904 between Benjamin F. Howard and Nancy Howard his wife James Howard and Ratie Howard his wife of the County of Lee and State of Virginia of the first part and John Fee of Harlan County Ky. of the second part.

Witnesseth that for and in consideration of the sum of (\$2500.00) two thousand five hundred dollars cash in hand paid the receipt of which is hereby acknowledged the said parties of the first part do hereby grant bargain and sell and convey unto the said John Fee of the second part a certain tract or parcel of Land lying and being in the County of Lee and State of Virginia near Hardy's Creek Known as the A.H. Fulkerson land containing by estimation 283 acres be the same more or less and bounded as follows to-wit: Beginning at a small black oak and chestnut in a flat near the top of a hill thence N. 34 W. 150 1-2 poles crossing a branch to a rock on the North side of the same thence N. 41 E. 8 1-4 poles down and gradually crossing said branch to a buckeye on its south bank thence with John Simms & Spangler line, thence with the said line South 75 E 22 poles to a stake at the corner of Sims & Spangler land thence N. 30 W. 38 poles to two Small white oaks and black oak thence N. 65 E 89 poles to a spanish and black oak thence N. 83 E. 105 poles to a gum ^{thence N 85 E 74 poles to a spanish oak} thence S 7 E 58 poles to chestnut and dogwood thence S 57 E. 46 poles to a poplar and Spanish oak thence S. 40 poles to two ~~baches~~ on the south side of a spring thence N. 81 W. 16 poles to a hickory thence S. 84 W. 49 poles to a poplar & Spanish oak thence S. 62 W. 36 poles to three chestnuts sprouts thence with Ben Henslys line poles to a large double chestnut thence in a Northwardly direction to a hickory standing inside of a field thence with Wm. Matlock's and Marion Wolfes line to the Beginning to have and to hold unto the party of the second part and his heirs forever. The parties of the first part covenant with the party of the second part that they will warrant generally the title to the land hereby conveyed and that they have done no act to encumber the same the parties of the first part further covenants that they will defend against the claims of themselves their heirs and all persons whomsoever. Witness the following signatures and seals the day and date first above written.

his
Benjamin F. X Howard (Seal).
mark

her
Nancy X Howard (Seal).
mark
his
James X Howard. (Seal).
mark

Virginia Lee County to-wit

I C.D.Smith a Notary Public for the County aforesaid in the State of Virginia, do certify that that Benjamin F. Howard, Nancy Howard & James Howard whose names are signed to the writing above bearing date on the 5th day of August 1904, have acknowledged the same before me in my county aforesaid.

Given under my hand this the 5th day of Aug. 1904.

My commission expires Nov. 24, 1907.

C.D.Smith, N.P.

Virginia, Lee County, to-wit:

In the County Clerk's office of Lee County, on this the first day of September, 1904. This deed was presented, and together with the certificate of acknowledgement annexed, admitted to record.

Teste:.....H.G.T.Ewing.....Clerk.

James Howard et al

To } Copy of Deed.

John Fee

Ex. "M" with

Ans. of John Fee.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon *Ben Howard,*
James Howard, H. P. Weston and
John Lee

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be
held for the said court, on the *3rd* Monday in *Aug.*, 190*4*, to answer a
bill in chancery exhibited against *Them* in our said court by
J. M. Howard

And have then there this writ. Witness, *H. C. T. Ewing*
A. B. MUNSEY, Clerk of our said Court,
at the court-house, the *6th* day of *Aug.*, 190*4*, and in the 12 *9th*
year of the Commonwealth.

A copy, Teste:

H. C. T. Ewing, clerk

H. C. T. Ewing, Clerk.

vs. { SUBPEONA
IN CHANCERY.

p. q.

To Rules.

..... Court.

For
James Howard.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon *Ben Howard*
James Howard, *H. P. Weston* and *John*
Lee

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be
held for the said court, on the *3rd* Monday in *Aug.*, 190*4*, to answer a
bill in chancery exhibited against *them* in our said court by
J. M. Howard

And have then there this writ. Witness, *A. C. T. Ewing*
~~A. B. MUNSEY~~, Clerk of our said Court,
at the court-house, the *6th* day of *Aug.*, 190*4*, and in the *129th*
year of the Commonwealth.

A. C. T. Ewing, Clerk.

Executed in part
by delivering
a true copy of
the within
Sinos to W.P. W.
Ben Howard
not further
excluded James
Howard
John F. L. not
found this Aug
13th 1904
J. D. Weston
for P.M. Ball
S. L. S.

J. M. Howard
vs. { SUBPEONA
IN CHANCERY.

Ben Howard et al

Duncan & Bridgman p. q.

To 2nd Aug. Rules.
Circuit Court.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

again
WE COMMAND YOU, That you summon *Ben Howard*
James Howard, W. P. Weston and
John Fee

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be held for the said court, on the *1st* Monday in *Sept.*, 190*4*, to answer a bill in chancery exhibited against *them* in our said court by

J. M. Howard

And have then there this writ. Witness, *A. C. F. Ewing*
A. B. MUNSTY, Clerk of our said Court,
at the court-house, the *30th* day of *Aug.*, 190*4*, and in the 12 *9th*
year of the Commonwealth.

a copy Teste;

H. C. Ewing Clk. *H. C. Ewing*, Clerk.

vs. { SUBPEONA
IN CHANCERY.

_____ p. q.

To _____ Rules.

_____ Court.

Copy for John
Fee

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

again
WE COMMAND YOU, That you summon *Ben Howard*
James Howard, W.P. Weston and
John Lee

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be held for the said court, on the *1st* Monday in *Sept*, 190*4*, to answer a bill in chancery exhibited against *them* in our said court by

J. M. Howard

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the *30th* day of *Aug*, 190*4*, and in the 12*9* year of the Commonwealth.

A Copy Test:

H. L. Ewing, Clerk.

vs.

{

SUBPEONA
IN CHANCERY.

p. q.

To Rules.

..... Court.

*Copy for James
Howard*

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

^{again}
WE COMMAND YOU, That you summon Ben Howard
James Howard, W. P. Weston
and John Lee

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be held for the said court, on the 1st Monday in Sept, 1907, to answer a bill in chancery exhibited against them in our said court by J. M. Howard

And have then there this writ, Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the 30th day of Aug, 1907, and in the 12 9 year of the Commonwealth.

H. B. Ewing, Clerk.

J. M. Howard

vs.

{ SUBPEONA
IN CHANCERY.

Ben Howard

Duncan Cridlin p. q.

To 1st Sept - Rules.

Circuit Court.

Not executed not
found not a
resident of the
county this sept
the 5th 1904
J. D. Weston Ds
for P. M. Ball S. L. de,